

# TONOPAH DAILY BONANZA

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## SOCIAL CLUBS MUST SECURE LIQUOR LICENSE

(Continued from Page Three.)

so construed as to include the right to sell liquors, but the same shall be distinct and separate business therefrom, and require separate and exclusive license therefor.

"The defendant argues here that the sale of liquors is a mere incident to the business of the club; it is merely incidental also to the business of a great hotel or to the business of a lodging house, but our law considers it a separate business in these instances.

"This brings us to the three phases of the question that very few decisions have touched upon, and those few often very lightly: "First, the peculiar profits of the retail liquor business.

"Second, the attitude of the state toward the liquor business as a source of revenue.

Third, the necessity for police supervision of the retail liquor traffic.

"There are still other phases of the problem, but these are intermingled with those just enumerated and will be reached later.

"As to the first, it cannot be disputed that the retail liquor business is peculiarly profitable, because of three main facts: the fixed price per drink, which keeps down one form of competition. The low wholesale price, generally speaking, as compared with the price per drink. The ease of handling. And to these there may generally be added the ordinary purely cash nature of the retail transactions.

"The third phase mentioned requires much more attention. Its consideration may be introduced with a quotation from the dissenting opinion in the Minnesota club case:

"Without proper police supervision, the retail liquor traffic would be intolerable. To be endurable it must be conducted under the eyes of the authorities; and such supervision necessitates extra expense and trouble, the burden of which should be borne by the traffic instead of the general public. In order to cover this expense, those who engage in the business are required to secure a license and pay for the privilege, an amount which will fairly reimburse the public for the extra expense and trouble incident to regulation."—Judge Elliott, 119 N. W. 494.

The second phase is the revenue phase. The state assumes that the evils of the liquor traffic are such that it shall furnish a large revenue, the legislature giving the benefit of the doubt to the state, and thereby imposing taxes that seem to be for purposes of revenue only, based probably upon the supposed profitable nature of the business, and the lesser notion that the number of saloons is limited to some degree by the tax. With the state, it is nearly a case of what the traffic will bear, for which attitude there is the ever-ready excuse—the evils of the liquor traffic do not stop with the saloon; they often merely begin there, and they are so far-reaching that we must be sure to collect enough revenue to keep the balance on the right side of the state's ledger. The idea is often carried further and amounts to the assertion of the right of the state to a share in the profits of the business as a whole. The attitude of the legislature of Nevada is indicated by the state revenue law providing

for wholesale and retail licenses. The tax is imposed by license on no other business directly for the benefit of the state, and yet the connection with police supervision in this instance must be remote indeed.

"Leading English cases and some American cases turn upon the theory that a club of the kind resembling the defendant is merely distributing among its members liquor that belongs to them and which in a sense they have already bought, and that the arrangement by which each man pays his own liquor bill to the club is simply an equitable method of distributing the expense of keeping and handling the liquors among those who use them, relieving those who do not from any burden of this kind. In passing, attention may be called to the defects of this view by mere words—revenue, police regulation, profit, defects which will perhaps become more apparent as the discussion proceeds.

"But the police supervision phase is important enough to deserve a word or two more. It must not be lost sight of that while the state of Nevada does not frown upon the liquor business, but rather encourages it, it is watchful of it, as indicated by regulations of various kinds bearing upon it, the closing of saloons on election days, exclusion of minors, etc. It must not be lost sight of either that serious troubles, many of them affecting the public directly, arise out of it, generally indeed at points more or less remote from the places of sale. In other words, the police supervision it demands extends throughout the whole community.

"But this problem, the one presented for determination in this suit, has still other phases. One of these is special privilege. The intent of the law is to treat all alike in so far as that is possible. Clearly all bona fide social clubs must be treated alike. Let us suppose there are three in a community. One is very select and has a membership limited to 100, men of prominence and education. Its bar is not heavily patronized and there is no disorder. The second club also has a limited membership, the limit being 500, men not quite so prominent or so well educated. Its bar is well patronized and some disorder results both in the club and as a result of its disposition of liquor on the outside. The third club also has a limited membership, the limit being 1,000, men in all walks of life. Its bar is very well patronized and there is a good deal of disorder resulting from its sale of liquor both in and out of the club. Of course, some one belonging to the select club rises right up at this point and says: 'Don't class us with the other two,' for ours is a different kind of a club. Yes, let us see how different. It is incorporated; so are the other two. Its membership is of a much higher grade; well, perhaps so, as to education and prominence, but maybe not as to the amount of liquor consumed per man. But suppose it is of a higher grade even in this respect, who is to draw the line between them? Is not that the business of the legislature, if it is any one's business, which is doubtful? The other two clubs may make all the arguments with perfect good faith, that their sanctity should not be invaded, for they are in a measure homes for their unmarried members, they are looking out for the order well enough, and so on. After all, are not the difference between these two clubs simply differences in degree?

"And this brings us naturally to the next phase of the problem. Has a saloon keeper any rights? He pays his license tax, in return for

which he gets the privilege of running a saloon. He feels that it is the duty of the state to keep down the form of competition most dangerous to him, that of numbers, by compelling other saloon keepers to pay the same tax. He thinks there is a kind of vested right in him growing out of a relation to the state, a relation of the state's creation, for which he has paid a fee on entering into it. One form of competition he has in a measure overcome, that of the retail price on the article sold, so the other becomes the important form. Clubs being treated by the law as exempt from the liquor license spring up about him. He bears a burden that they do not; yet he has no assurance that their numbers will not increase to his detriment and ultimately to his undoing.

"As is the ambition of most saloon keepers, one seeks to make his place high-class, and succeeds. Along comes a select club and possibly takes every patron he has; and the club pays no license. Or perhaps his place is not quite so select, but has a good patronage. Somebody organizes a bona fide club and takes half his business. Right here steps in an argument concerning bars as mere incidents to clubs and not separate business. Now about the case just mentioned, where a good share of the business of a saloon goes across the way to a newly organized social club's bar. Is it any the less business because it has changed its location to one of greater privacy?

"Now another phase of the problem. After all, the argument of the social club really rests upon its limited membership and its privacy. The public is not invited and cannot come in. The saloon welcomes the public. At first glance this looks like the turning point of the whole subject, but will it stand analysis? A club starts with a membership of 100 and this is fixed as the limit. The public is surely welcomed up to this limit, but the restrictions as to qualifications of members may exclude a goodly portion of the public. However, this club is a great success and some one conceives the idea of starting another; it has a limit, too, say 500; it welcomes the public a little more freely. It succeeds and is so good a thing that somebody who has not gotten into either of the others starts a third; it has a limit, also, 1,000, and the public gets a stronger invitation up to the limit. Then a bright fellow gets the notion that a club without any limit might be a good thing; bona fide all right, but the public has a strong invitation to join, and the club being so large, the fee for entrance is not burdensome and the dues are mild. The only restriction it really makes is the entrance fee

and the dues; the public is welcome, and the only portion barred is that part so poor that the entrance fee and dues are beyond it. Now all these clubs differ only in degree. They have their attractions to which the very poor man has no access. Are we not getting around to that question of special privilege again, for the very poor man is relegated to the saloon for his liquor, and it has none of those attractions that the dues and initiation fees provide, for after all, it must be remembered, taking the clubs' word for it, that the bar is no real source of profit. The other things come from dues and fees. And this exclusion of the public as a whole, is that not the privilege of the club? Why if it is enabled to secure that privilege, shouldn't it ask for another as an incident to that and because of it?

"And this exclusion of the public again—what is it for? Many things. One of them is the more effective maintenance of order. Some saloons accomplish the same thing in much the same way, by catering to an orderly class, and extending little encouragement to any other; but mere orderliness does not relieve it of the license tax, or of police supervision. The public can not delegate any of its police power to the keeper of a saloon, or to any other man but its properly qualified officials. To do so would be conferring a special privilege.

"There is still another phase, already touched upon, but in another connection, the question of competition. In a given community there is a certain amount of liquor business and it has its grades. Any establishment except a saloon selling liquor at retail withdraws some trade from the saloons as a whole, and especially from those of the grade to which that trade ordinarily belongs. Suppose that a saloon, one saloon in a town, naturally draws its patronage from a certain class of men. A club is formed that is attractive to that very class of men; and the saloon loses a very considerable share of its former trade, which because of the peculiar attractiveness of the club, goes to the bar of the club. The club bar thus competes with this saloon, and yet it is argued that conducting such a bar is not a separate business. What can compete with a business but another business?

Referring to the revenue phase of the matter in connection with the special privilege phase, there is occasion to consider the attitude of the law. The wholesaler pays his tax, and as between the wholesaler and the retailer the line seems to be sharply drawn. But there is a middle class, neither one nor the other, from whom no tax is exacted for selling liquor by the quart in connection with some other

business. Section 1192, Cutting's Compilation. There must be a reason for this, else it would be open to the special privilege objection. The reason is not far to seek; it rests on the fact that another license is exacted for the main business and that fact that the presumed great profit per drink is an absent quantity. But suppose the main business of the concern comes under the first-class provided for by the statute, wherein the average monthly sales amount to at least \$100,000, what would happen if only a comparatively small number of sales by the drink were made as a mere incident of this great business? It is either that the concern would be compelled, in this instance, to take out the retail liquor license, for otherwise a concern of the tenth class would have just as much right to the same amount of retail liquor business as the big concern; and it would be under more temptation to take it up, because even though a small matter to the big concern, it might make up a substantial part of its monthly sales of \$1,000 of the small concern of the tenth class. Thus what may be merely an incident to the business of the big concern is a great deal more than that to the small one. But no line can be drawn among the ten classes provided by the statute, because no one can tell where the business ends and the incident begins.

"It is far easier to treat the sale of liquor by the glass as a separate business. A concern of the first class mentioned above may have many patrons, and there may be good reason why it should dispense liquor to them by the glass for their comfort and convenience, just as much reason as in the social club, and it might be done with as much privacy and without a suggestion of immediate disorder. In other words, the dispensing of liquor by the glass might be even more an incident to its main business than to the main business of a social club; nevertheless it would pay the tax.

"There is another feature of the competition phase that deserves a word. It may be argued that some men use liquor at social clubs who would not patronize a saloon. Unless this means a mere transfer of its use from the home to the club, and no increase of use after the transfer, it really means that the club is encouraging the use of liquor. This may be an argument against the competition phase, but it is surely to some extent an adoption of the police regulation phase, for every addition to the army of drinkers or to the amount of liquor consumed increases the necessity for that regulation.

"The conclusion reached, in my opinion, is that social clubs wherein liquor is disposed of by the glass to members and guests are sufficiently engaged in the business of retailing liquor to require them to take out retail liquor license."

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